



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chem-Fab Corporation
File: B-224644
Date: January 2, 1987

DIGEST

The Air Force improperly rejected the protester's offer for elevator assemblies under a restricted source procurement where the solicitation provided that nonapproved sources could qualify by submitting evidence of having satisfactorily produced the item for a Department of Defense agency, and the protester submitted evidence that it had a contract with the Navy for an item that is the "mirror image" of the solicited item. The Air Force's conclusion, that this evidence was insufficient, was unreasonable where the Navy had accepted delivery of the "mirror image" item 2 months prior to contract award, and the Air Force has provided no convincing rationale for rejecting the protester as a qualified source of supply based on its ability to satisfactorily produce the mirror image part.

DECISION

Chem-Fab Corporation protests the rejection of its offer by the Department of the Air Force under request for proposals (RFP) No. F09603-86-R-0853 for UH-1N helicopter elevator assemblies. The Air Force rejected Chem-Fab's proposal because Chem-Fab was not an approved source and had not submitted adequate documentation that it was otherwise qualified to produce the part. We sustain the protest.

The RFP was issued on a restricted basis because the agency did not have a complete data package for the required part. Section M-46 of the RFP stated that only Bell Helicopter Textron Inc. had been approved by the government to supply the solicited elevator assemblies. Section M-46 also provided, however, that offers from other firms might be considered for award if the offeror submitted: (1) proof of prior Department of Defense (DOD) approval as a supplier of the item; or (2) evidence of having satisfactorily produced the item for a DOD agency or the prime equipment manufacturer; or (3) engineering data (such as manufacturing

controlled drawings, qualification test reports, or quality assurance procedures) sufficient to determine acceptability of the item.

Chem-Fab responded to the RFP and submitted a copy of a current contract with the Navy for supply of helicopter elevator assemblies, part No. 205-030-856-91. Chem-Fab explained that this part is for the left side of the UH-1N helicopter and is the "mirror image" of part No. 205-030-856-93, for the right side of the UH-1N, that was being solicited by the Air Force. Chem-Fab also enclosed a Bell Helicopter "Quality Procurement Specification" which allegedly showed that Chem-Fab was approved by Bell to produce the elevator assemblies. Additionally, Chem-Fab supplied a listing of Army contracts under which it had supplied similar elevators for Army helicopters. Chem-Fab stated that drawings were available if required.

Air Force technical personnel reviewed the data submitted by Chem-Fab and concluded that it was insufficient to determine Chem-Fab's acceptability. The Air Force then requested that Chem-Fab provide the drawings it had offered to supply earlier. The Air Force also contacted the Navy concerning Chem-Fab's contract for part No. -91, and Bell Helicopter to ascertain Chem-Fab's status as a vendor. -

The Air force asserts that the drawings Chem-Fab submitted were illegible, and that the Navy advised that Chem-Fab's first article had failed and would require resubmission. In addition, Bell could not identify Chem-Fab as a vendor. Therefore, the agency concluded that it could not approve Chem-Fab, who was the low offeror. Award was made to Schweizer Aircraft, the second low offeror, on August 28, 1986.^{1/}

Chem-Fab asserts that the agency never informed the firm that there was any problem with any of the documentation it submitted, and argues that the agency had a duty to conduct discussions with Chem-Fab to point out any perceived deficiencies in this respect. In addition, Chem-Fab notes that the agency never contacted the Army concerning the Army contracts with Chem-Fab for similar elevator assemblies. The protester also contends that the agency should have

^{1/} Two other offers were received, one of which was from Bell Helicopter. Bell had identified Schweizer as its vendor earlier, and it appears that Schweizer was considered qualified to produce the assemblies as a result of that information.

recontacted the Navy concerning Chem-Fab's contract for the No. -91 assemblies. Had it done so, it would have learned that the Navy conditionally approved Chem-Fab's first article on June 23, 1986, that it accepted 35 of the elevator assemblies on July 8, 1986, 20 more on July 31, 25 more on August 14, and 15 more on August 26--all prior to award of the protested contract.

The agency responds that the fact that Chem-Fab supplied similar elevator assemblies to the Army is irrelevant and does not demonstrate that it can supply different assemblies to the Air Force. In addition, the agency argues that Chem-Fab had a duty to submit adequate and legible documentation to substantiate its qualifications to produce the assemblies. The Air Force asserts that its procedures for qualifying new sources do not allow for unlimited investigations and that its request for additional information from the protester, as well as its inquiries to Bell and the Navy, were sufficient under the circumstances.

Our Office has consistently found that when a contracting agency restricts a contract award to an approved source, nonapproved sources must be given a reasonable opportunity to qualify. Vac-Hyd Corp., 64 Comp. Gen. 658 (1985), 85-2 CPD ¶ 2. In this case, the Air Force asserts that it gave Chem-Fab a reasonable opportunity to qualify, but the firm simply failed to make the requisite demonstration of its ability. We find, however, that the Air Force's conduct here was not reasonable, and that as a result, Chem-Fab was improperly excluded from the competition. We base this conclusion on the fact that nearly 2 months before this contract award, the Navy had accepted delivery of the "mirror image" part No. -91 from Chem-Fab. We believe that this was sufficient evidence that Chem-Fab had satisfactorily produced the solicited item, and that it was evidence of which the Air Force should have been aware.

While we agree with the agency that the burden was on Chem-Fab to show that it had the ability to produce the item, Chem-Fab did provide the agency with a copy of the Navy contract, and the agency in fact contacted the Navy on May 29, 1986, to ascertain the status of the contract. Although the Navy contract administrator indicated that Chem-Fab's first article had failed, he also stated that the first article had been resubmitted and was being retested; he indicated that testing would not be completed for at least a week and a half. Further, it appears that Chem-Fab was not advised that the agency had contacted the Navy and been told that the first article had failed. Under these

circumstances, we believe the agency had an obligation to recontact the Navy concerning the performance of the resubmitted first article before eliminating Chem-Fab from further consideration for an award which was not made until nearly 3 months after the initial contact with the Navy.

We recognize that the agency now argues that even if Chem-Fab has successfully produced part No. -91, the left side elevator assembly, this does not mean it has the tooling necessary to also produce the right side assemblies. The protester asserts, however, that only minor modifications to its tooling are necessary to produce the right side assemblies and the agency has not rebutted this assertion (although it did file rebuttal comments to Chem-Fab's response to the agency report). Moreover, we think that since the agency's rationale for restricting the procurement was lack of a complete data package for the required part, the fact that Chem-Fab had satisfactorily produced the left side assembly should have been sufficient to demonstrate its ability to produce the right side assembly, even though it might have to make some modifications to its existing tooling in order to do so. The agency has never denied that part No. -91 is the "mirror image" of part No. -93, nor has it provided any other convincing rationale for rejecting Chem-Fab as a qualified source of supply, based on its demonstrated ability to satisfactorily produce part No. -91. We therefore sustain the protest.

We recommend that the agency terminate the existing contract and reaward its requirements for elevator assemblies to Chem-Fab if it is found to be responsible.^{2/}

The protest is sustained.

for *Harry R. Van Cleave*
Comptroller General
of the United States

^{2/} We note that Chem-Fab has also argued that whether the firm is qualified to produce the solicited elevator assemblies is itself a question of responsibility that should have been referred to the Small Business Administration for possible issuance of a certificate of competency, since Chem-Fab is a small business. We have held, however, that when an agency makes a finding that an offer from a small business concern is not technically acceptable, because, for example, it is not an approved source, the Small Business Act does not apply. See Vac-Hyd Corp., 64 Comp. Gen. 658, supra.